

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: RONALD VOSE, dba INDUSTRIAL FAB & MACHINE, INC. Black Hawk County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2010-AQ- 48
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TO: Ronald Vose
Industrial Fab & Machine, Inc.
520 W Parker Street
Waterloo, Iowa 50704-2631

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Ronald Vose, dba Industrial Fab & Machine, Inc. (Industrial Fab & Machine) for the purpose of resolving the air quality violations which occurred when Industrial Fab & Machine failed to timely submit a Minor Source Emission Inventory Questionnaire (MSEIQ). In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Reid Bermel
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-4918

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air

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quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Industrial Fab & Machine is a steel fabricating company located in Waterloo, Iowa.

2. In January 2010, DNR Air Quality Bureau sent Industrial Fab & Machine a letter informing the facility that the DNR was conducting an inventory of air pollutant emissions from minor source facilities in the eastern third of the state of Iowa. The letter included instructions on how to complete and submit the MSEIQ for the facility. The letter also included information on additional assistance for completing the MSEIQ. The letter informed the facility the MSEIQ was due May 15, 2010.

3. In February 2010, DNR sent a postcard to Industrial Fab & Machine informing the facility of free MSEIQ training for submitting the report electronically.

4. In April 2010, DNR sent a postcard to Industrial Fab & Machine reminding the facility of the May 15, 2010 due date for the MSEIQ submittal. The postcard included information on assistance for completing the MSEIQ.

5. On May 15, 2010, the MSEIQ for facilities in the eastern third of the state were due. Industrial Fab & Machine failed to submit its MSEIQ by this date.

6. On May 26, 2010, DNR issued a noncompliance letter to Industrial Fab & Machine for failing to submit its MSEIQ by May 15, 2010. The letter required the MSEIQ to be submitted by June 15, 2010. The letter stated that failure to submit the MSEIQ by June 15, 2010 could result in further enforcement, including a monetary penalty. On September 9, 2010, DNR received the MSEIQ from Industrial Fab & Machine.

7. Industrial Fab & Machine has demonstrated a past history of noncompliance with the air quality regulations. In October 1998, Industrial Fab & Machine was issued a Notice of Violation letter for failing to obtain a construction permit prior to installing an emission unit. In July 1999, Industrial Fab & Machine was issued a Notice of Violation letter for failing to submit the results of a stack test in a timely manner. In May 2003, Industrial Fab & Machine was issued a Notice of Violation letter for failing to maintain the rolling totals for two construction permits. In March 2005, Industrial Fab & Machine was issued a Notice of Violation letter for failing to timely submit the 2003 MSEIQ. In July 2007, Industrial Fab & Machine was issued a letter for failing to timely submit the 2006 MSEIQ. In August 2007, Industrial Fab & Machine was issued a Notice of Violation letter for failing to timely

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submit the 2006 MSEIQ. In January 2008, Industrial Fab & Machine was issued a Notice of Violation letter for failing to comply with the recordkeeping requirements listed in its air quality construction permits. In January 2009, Industrial Fab & Machine was issued another Notice of Violation letter for failing to timely submit the 2006 MSEIQ.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 21.1(3) states that the person responsible for equipment shall provide information on fuel use, materials processed, air contaminants emitted, estimated rate of emissions, periods of emissions or other air pollution information to the Director upon the Director's written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The MSEIQ for Industrial Fab & Machine was due May 15, 2010 and the facility was informed of this requirement on several occasions. The above mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, it is hereby ordered and Industrial Fab & Machine agrees to do the following:

1. Industrial Fab & Machine shall pay an administrative penalty of \$1,000.00 within 30 days of the date the Director signs the administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$1,000.00. The administrative penalty is determined as follows.

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Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Industrial Fab & Machine has been able to delay the costs associated with completing the MSEIQ for its facility. It is estimated that the economic benefit achieved by Industrial Fab & Machine is at least \$50.00 and \$50.00 is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient method to resolve this matter. Industrial Fab & Machine's failure to timely submit the MSEIQ prevented the DNR and the public from being aware of the facility's compliance status in regard to the rules and regulations. Failing to timely submit the MSEIQ prevents the DNR from accurately inventorying minor source air pollutants. This violation threatens the integrity of the regulatory program because compliance with the reporting requirements is required of all companies such as Industrial Fab & Machine. Therefore, \$200.00 is assessed for this factor.

Culpability - Industrial Fab & Machine has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The facility received at least three reminder letters regarding the submittal of the MSEIQ. The facility was also provided information as to where it could obtain assistance in completing the MSEIQ. Additionally, the facility has an extensive history of environmental violations, including three letters of noncompliance regarding the submittal of the facility's 2006 MSEIQ. Based on the above considerations, \$750.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS


This administrative consent order is entered into knowingly and with the consent of Industrial Fab & Machine. For that reason, Industrial Fab & Machine waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

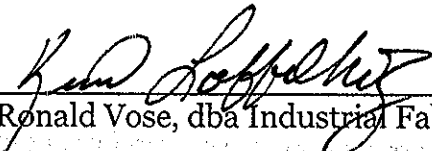
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an

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administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.


PATRICIA L. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 9 day of
November, 2010.


Ronald Vose, dba Industrial Fab & Machine, Inc.

Dated this 3 day of
November, 2010.

AQB #07-01-120; Kelli Book; Reid Bermel, DNR Field Office 1; VII.C.3